

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

JUL 6 4 11 PM '94

MM Docket No. 93-307 ✓

DISPATCH

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Jensen Beach and Melbourne)
Florida)

RM-8386

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 21, 1994;

Released: July 5, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 149 (1994), issued in response to a petition jointly filed by HLG, Inc. ("HLG"), licensee of Station WHLG(FM), Channel 272A, Jensen Beach, Florida, and City Broadcasting Co. ("City"), licensee of Station WGGD(FM), Channel 272A, Melbourne, Florida ("jointly referred to as 'petitioners'"), requesting the substitution of Channel 272C3 for Channel 272A at Jensen Beach, and the modification of Station WHLG(FM)'s license to specify the higher class channel. In order to accomplish the upgrade at Jensen Beach, the *Notice* also proposed the substitution of Channel 236A for Channel 272A at Melbourne, Florida, and the modification of Station WGGD(FM)'s license to specify operation on Channel 236A. Petitioners filed joint comments restating their intentions to apply for the respective channels, if allotted.¹

2. We believe the public interest would be served by substituting Channel 272C3 for Channel 272A at Jensen Beach, Florida, since it could provide the community with a wide coverage area FM service. In addition, the substitution of Channel 236A for Channel 272A at Melbourne, Florida, will allow Station WGGD(FM) to operate at 6 kilowatts. Channel 272C3 can be allotted to Jensen Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed transmitter site.² Channel 236A can be allotted to Melbourne in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.4 kilometers (4 miles) north of the commu-

nity,³ in order to avoid a short-spacing to Station WWRM(FM), Channel 235C, Tampa, Florida. The substitution at Jensen Beach is contingent on Station WAVW(FM), Vero Beach, Florida, moving to Channel 269C3 as ordered in MM Docket 89-456.⁴ Therefore, issuance of a construction permit or license for Channel 272C3 at Jensen Beach may be withheld until Station WAVW(FM) at Vero Beach is licensed on Channel 269C3. We also note that the allotment of Channel 272C3 at Jensen Beach, Florida is located within 80 kilometers of the Federal Communication Commission's monitoring station at Vero Beach, Florida. Therefore, HLG should refer to the provisions of Section 73.1030(c)(1)-(5) of the Rules governing protection of Federal Communications Commission Monitoring Stations.

3. Commission policy requires reimbursement to affected stations for the reasonable cost associated with changing frequencies. HLG has stated its intention to reimburse City, the licensee of Station WGGD(FM), Melbourne, Florida, for the costs associated with relocating its station in order to accommodate the upgrade at Jensen Beach, and the licensee of Station WGGD(FM) has consented to the frequency change and site relocation.

4. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WGHL(FM) to specify operation on Channel 272C3 at Jensen Beach, Florida. We are also modifying the license for Station WGGD(FM) to specify operation on Channel 236A at Melbourne, Florida.

5. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 19, 1994, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Jensen Beach, Florida	272C3
Melbourne, Florida	236A, 292A, 296C1

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WHLG(FM), Jensen Beach, Florida, IS MODIFIED, to specify operation on Channel 272C3 in lieu of Channel 272A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

¹ City filed comments requesting that the record correctly reflect Robert A. Depont, Attorney at Law, 140 South Street, P.O. Box 386, Annapolis, MD 21404 as Counsel for City Broadcasting Co., Inc. We issued an *Erratum* correctly identifying legal counsel for City.

² The coordinates for Channel 272C3 at Jensen Beach are 27-12-53 North Latitude and 80-15-24 West Longitude.

³ The coordinates for Channel 236A at Melbourne are 28-08-08

North Latitude and 80-35-35 West Longitude.

⁴ A *Report and Order* was adopted on September 19, 1990, in MM Docket 89-456, granting the substitution of Channel 269C3 for Channel 269A at Vero Beach, Florida. This action became effective November 16, 1990. See 5 FCC Rcd 5710 (1990). An application (BPH9102131C) to implement the upgrade on Channel 269C3 is pending.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WGGD(FM), Melbourne, Florida, IS MODIFIED, to specify operation on Channel 236A in lieu of Channel 272A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, HLG, Inc., licensee of Station WHLG(FM), Jensen Beach, Florida, is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee for Station WGGD(FM) as follows: Robert A. DePont, Attorney at Law, 140 South Street, P.O. Box 386, Annapolis, MD 21404 (Counsel for City Broadcasting Co., Inc.) and Media VI, A Florida General Partnership, P.O. Box 39, Vero Beach, Florida 32961 (licensee of Station WAVW(FM)).

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau